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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/698,624	10/27/2000	Barry Allan Fisher	8964.72USU1	4935
23552	7590	03/08/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			PERUNGAVOOR, SATHYANARAYA V	
			ART UNIT	PAPER NUMBER
			2625	

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	09/698,624	FISHER ET AL.	
	Examiner	Art Unit	
	Sath V. Perungavoor	2624	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 February 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 08/16/05
13. ☐ Other: _____


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 Examiner
 Art Unit: 2624

Continuation of 11. does NOT place the application in condition for allowance because: Applicants argue that Examiner should apply the cited references in response to applicants' challenge of the official notice. Examiner respectfully disagrees. When the Examiner takes an official notice and the applicants provide a timely challenge. Examiner is only required to provide the evidence for the matter official notice taken, see MPEP 2144.03 (C). Elements taken official notice for is glaringly evident from a cursory review of the coversheet of the cited patents. In claim 4, title of 4,933,976. In claims 15 and 24, 14 in the cover drawing of 4,866,764. In claim 22, 120 in the cover drawing of 4,835,372. In claim 26, 12 in the cover drawing of 4,917,987. Applicants further argue that Fishbine does not disclose "receiving data from a central processor relating to a processed fingerprint image". Examiner respectfully disagrees. The main point discord between the applicants and the Examiner is what receives the data. If Arguendo, the Examiner agrees that data is received by the mobile unit as asserted by the applicants in page 13, last paragraph, it would still be sufficient to satisfy the claim limitations. Since, the claim does not explicitly call for the portable handheld device to do the receiving step directly and limitations of specification are not to be read into the claims. It been held that "one of the cardinal sins of patent law-reading a limitation from the written description into the claims," *SciMed Life Sys.*, 242 F.3d at 1340. Applicants furthermore argue that Fishbine's enhancement operation is not done at the portable apparatus, but done outside the apparatus. Examiner respectfully disagrees. The rejection is a combination rejection of Fishbine and Glaze. Processor is disclosed by Glaze not Fishbine (see office action page 15, paragraph 3). In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).